

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

WILLIE L. BANDY,

Plaintiff,

v.

**SECRETARY OF THE DEPARTMENT
OF TREASURY, et al.,**

Defendants.

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CASE NO. 1:23 CV 54

JUDGE DONALD C. NUGENT

Magistrate Judge James E. Grimes Jr.

MEMORANDUM OPINION

This matter is before the Court on the Motion to Dismiss for Failure to State a Claim and Motion to Dismiss for Lack of Jurisdiction (Docket #23) filed by Defendants, Secretary of the Department of Treasury and Commissioner of Internal Revenue Service, pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), and the Motion for Default Judgment (Docket #24) filed by Plaintiff, Willie L. Bandy.

This case was previously referred to Magistrate Judge James E. Grimes Jr. for pretrial supervision. (Docket #4.) On November 9, 2023, Magistrate Judge Grimes issued a Report and Recommendation on the Parties' Motions. (Docket #28.) Magistrate Judge Grimes recommends that the Court grant Defendants' Motion to Dismiss, finding that the Court lacks subject matter jurisdiction over Mr. Bandy's challenge to the Treasury Department's offset under 26 U.S.C. §

6402(c) of the \$600 economic impact payment and, that even if the Court had jurisdiction over Mr. Bandy's tax-related claim, Mr. Bandy has otherwise failed to state a claim upon which relief can be granted. Further, the Magistrate Judge recommends that the Court deny Mr. Bandy's Motion for Default Judgment, explaining that Mr. Bandy's first service was not proper and that Defendants filed their Motion to Dismiss on October 6, 2023, within 60 days of service having been executed on all of the proper individuals.

On November 22, 2023, Mr. Bandy filed an Objection to the Report and Recommendation. (Docket #29.) On December 1, 2023, Defendants filed their Response Brief. (Docket #30.)

Standard of Review for a Magistrate Judge's Report and Recommendation

The applicable district court standard of review for a magistrate judge's report and recommendation depends upon whether objections were made to the report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case *de novo*. FED. R. CIV. P. 72(b) provides:

The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

Conclusion

The Court has reviewed the Magistrate Judge's Report and Recommendation *de novo*, analyzing Mr. Bandy's Objection to the Report and Recommendation and Defendants' Response thereto. Magistrate Judge Grimes thoroughly and exhaustively reviewed the Parties' Motions and all responsive briefing, in conjunction with the applicable statutory and case law. Magistrate Judge Grimes properly concluded that Mr. Bandy is not entitled to default judgment; that the Court lacks subject matter jurisdiction over Mr. Bandy's tax-related claim; and, that Mr. Bandy has otherwise


failed to state a claim upon which relief can be granted.

Accordingly, the Report and Recommendation issued by Magistrate Judge Grimes (Docket #28) is hereby ADOPTED in its entirety.

The Motion to Dismiss for Failure to State a Claim and Motion to Dismiss for Lack of Jurisdiction (Docket #23) filed by Defendants, Secretary of the Department of Treasury and Commissioner of Internal Revenue Service, is hereby GRANTED. The Motion for Default Judgment (Docket #24) filed by Plaintiff, Willie L. Bandy, is hereby DENIED.

This case is hereby TERMINATED.

IT IS SO ORDERED.



DONALD C. NUGENT
United States District Judge

DATED: December 6, 2023